IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12923 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH @ KAMO MANSUKHBHAI JETHVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12923 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 23/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the

order passed against him by Police Commissioner, Rajkot City, on 20th of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as dangerous person from 20th of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration four cases registered against the petitioner under Sections 454, 457 and 380 of the Indian Penal Code and secondly, the detaining authority took into consideration two in-camera statements of witnesses as recorded by the sponsoring authority on 14th of September,2004 as verified by the detaining authority on 17th of September, 2004. The identify of the witnesses is not disclosed by the detaining authority claiming privilege under Section 9(2) of the PASA Act.

3. Four crimes came to be registered against the petitioner, all before Bhaktinagar Police Station, Rajkot, on 4th of May, 2004, 22nd of May, 2004, 6th of August, 2004 and 25th of August, 2004. In first case, it was found that the petitioner was involved in the theft of VCD and video cassettes, in second case, the petitioner was found in theft of one black & white TV and cash of Rs. 175/-, in third case, he was found involved in the theft of gas-stove and sewing machine while in the fourth case, the allegation was about theft committed by the petitioner of one mobile phone and cash of Rs. 3,500/-. The detaining authority thoroughly examined the investigation papers in all the four cases registered against the petitioner and came to the conclusion that the petitioner was a habitual offender in committing offences of theft. The witnesses stated through incamera statements that in one of the incidents which occurred on 10th of July, 2004, the petitioner attempted to sell a stolen TV and VCR to the witness, and on his refusal, the witness was beaten and was dealt with high handedly. In the second incident, which occurred on 27th of May, 2004, the witness was forced to keep on pledge the stolen articles and to lend the petitioner Rs.10,000/-. On refusal by the witness, the witness was beaten and was dealt with high handedly by the petitioner.

4. Relying upon the above material, the detaining authority came to the conclusion that the petitioner was

engaged in anti-social and illegal activities committing thefts and was harassing innocent citizens. In view of the detaining authority, the petitoner was a dangerous persons within the meaning of the PASA Act. The detaining authority also concluded that the petitioner was headstrong, ferocious and dangerous person and was in habit of administering threats to the innocent citizens and to beat them. The detaining authority came to the conclusion that these illegal activities of the petitioner were prejudicial to the maintenance of public order. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that to prevent the illegal dangerous activities of the petitioner forthwith, there was no other alternative except to detain the petitioner under the PASA Act. The detaining authority therefore passed the order to detain the petitioner under the PASA Act which is under challenge in this petition.

5. Learned Advocate Ms. Subhadra G. Patel for the petitioner and learned AGP Ms. Hansa B Punani for the respondents were heard at length.

6. Out of various grounds urged on behalf of the petitioner to challenge the order of detention as opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether the detaining authority applied mind properly to the material placed before him.

7. The grounds of detention placed on record it is undoubtedly established that the petitioner was in judicial custody in all the cases filed against him. In the grounds of detention, it is also mentioned that in all the four cases though the petitioner preferred applications for bail, but each application came to be rejected by the competent court. In this respect, the detaining reached to the subjective satisfaction that the petitioner was likely to file applications for bail again before the court. The detaining authority also concluded that on so filing bail applications by the petitioner before the court, he was likely to be released on bail. The detaining authority also concluded that on so releasing the petitioner on bail by the court, he was likely to continue his dangerous activities prejudicial to the maintenance of public order.

8. The facts of the present case are squarely covered by a decision of the Apex Court in the matter of AMRITLAL vs. UNION GOVERNMENT, as reported in AIR 2000 SC 3675. The Apex Court observed that there must be

cogent materials before the Officer passing the detention order that the detenu was likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail was not held a cogent material and the detention order based on such material was held liable to be quashed.

9. In the present case, the petitioner preferred applications for bail, but the same met with the fate of rejection by the competent court. Thereafter, on going through the papers, there was no material placed before the detaining authority at all to infer that the petitioner was likely to file bail applications again before the competent court. Undoubtedly, the application filed earlier by the petitioner and the order passed by the court thereon rejecting such applications, is not a cogent material to infer that the petitioner was likely to move applications for bail again. Thus, the subjective satisfaction arrived at by the detaining authority that the petitioner was likely to move applications for bail again, and that he was likely to be released on bail by the competent court, and that he was likely to continue his dangerous activities, is not based on any material, let alone, any cogent material. The order of detention can be passed against the detenu who is under judicial custody. There is no bar as such for the detaining authority to pass orders of detention in such circumstances, but at the same time, there must be some cogent materials before the detaining authority to infer that the judicial custody of the detenu was likely to end, and the detenu was likely to continue his illegal activities. In the present case, there is nothing worth the name of the material to infer that the petitioner was likely to move application for bail again and there was likelihood of ending of judicial custody of the petitioner. Thus, the subjective satisfaction arrived at by the detaining authority in this respect is not valid, legal and in accordance with law. The order under challenge therefore is required to be quashed and set aside on this ground alone.

10. In the result the petition is allowed. The order passed by the Commissioner of Police, Rajkot City, on 20.09.2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Kamlesh @ Kamo Mansukhbhai Jethva is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. VORA, J.)

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